

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

FAO.No. 109 of 2007()

IA.NO.1527/06 IN OS.115/2006 of I ADDL.SUB COURT,ERNAKULAM
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APPELLANT/6TH RESPONDENT/6TH DEFENDANT

THOMAS VARGHESE, AGED 42 YEARS,
S/O.LATE P.O.VARGHESE, PANAKKAMATTOM HOUSE,
HOUSE NO.28/2396, CHELAVANNOOR, ELAMKULAM,
KOCHI-20.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

1. ST.MARY'S ORTHODOX CATHEDRAL,
PARK AVENUE, ERNAKULAM, KOCHI-11, REPRESENTED
BY ITS PRESENT TRUSTEE JACOB C.MATHEW,
AGED 64 YEARS, S/O.P.C.MATHAI, RESIDING AT 34/691,
KARUVELIL ROAD, MAMANGALAM, PALARIVATTOM PO,
KOCHI-682 02.
2. M.ISSAC, AGED ABOUT 68 YEARS,
S/O.M.K.MATHAI, KADAVIL HOUSE, PANAMPILLY NAGAR
P.O.
3. HIS GRACE ZACHARIAH MAR ANTHOALOS,
AGED ABOUT 60, METROPOLITAN OF COCHIN DIOCESE,
ZION SEMINARI, KORATTY, THRISSUR DISTRICT.
4. HIS HOLINESS MORAN MAR BASELIUS MAR
THOMA DIDYMUS-1, AGED ABOUT 84, CATHOLICOS OF
THE EAST AND MALANKARA METROPOLITAN, CATHOLICATE
ARAMANA, DEVALOKAM, KOTTAYAM-38.
5. MALANKARA ORTHODOX EPISCOPAL SYNOD,
REPRESENTED BY ITS SECRETARY, HIS GRACE THOMAS
MAR ATHANASIUS, AGED ABOUT 68 YEARS,
METROPOLITAN, CATHOLICATE ARAMANA, DEVALOKAM,
KOTTAYAM-38.

FAO.109/07

6. M.C.POULOSE, AGED 45 YEARS,
S/O.K.V.CHERIAN, KEERAMKUZHIYIL,
PARAMBITHARA ROAD, PANAMPILLY NAGAR P.O.,
KOCHI-36.

7. SONY JOB, AGED 36 YEARS,
S/O.T.M.JOB, THOLATH HOUSE, L.F.C.ROAD,
KALOOR, KOCHI-17.

BY ADV. SRI.PHILIP MATHAI
SRI.M.K.DAMODARAN (SR.)
SRI.O.V.MANIPRASAD
SRI.R.MURALEEKRISHNAN
SRI.M.V.SABU
SRI.S.V.BALAKRISHNA IYER (SR.)

R5 BY ADV. SRI.A.V.THOMAS
SRI.JOJO GEORGE
SRI.NIDHI SAM JOHNS

R4 BY ADV. SRI.S.SREEKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 06/08/2007 ALONG WITH FAO NO.114 OF 2007, FAO NO.113 OF
2007 & FAO NO.181 OF 2007, THE COURT ON 18/08/2007
DELIVERED THE FOLLOWING:

Dated this the 13th day of April, 2007.

ORDER

Basheer, J:

These appeals are directed against an interim order passed by the First Addl. Subordinate Judge's Court, Ernakulam in OS.No.115/2006. While FAO.114/07 is at the instance of the plaintiff in the suit, the other two appeals are by defendant Nos. 5 and 6 respectively. The appellants contend that the court below has misdirected itself while passing the impugned order.

2. We have heard learned counsel for the parties at length on the question of interim order that has to be passed pending the appeals.

3. Appellant-plaintiff is St.Mary's Orthodox Church at Park Avenue in Kochi which is stated to be a constituent parish Church of the Malankara Orthodox Syrian Church. The suit is instituted by its trustee. The Church has got a cemetery and chappal at Elamkulam which are the subject matter of the suit in which the impugned order has been passed. The suit is an off-shoot of a simmering dispute pending between the two factions led by the plaintiff on one side and the contesting defendants on the other. The imbroglio cropped up when the chappal at Elamkulam was declared as a Church by the

contesting defendants. Series of litigations followed. It is on record that apart from the suit with which we are concerned in these appeals some more suits are pending before the Munsiff Court, Ernakulam..

4. A Division Bench of this Court in WP.No.s 9761 and 12097 of 2006 had passed an interim order on June 9, 2006, permitting the plaintiff Church to conduct prayers from 6 AM to 9AM. The rival factions (contesting respondents) were allowed to conduct prayers from 10 AM to 1 PM. It is true that the above order was specifically in respect of the Holy Mass to be held in the Church on 11th and 18th of June 2006. But it is the admitted position that the said arrangement is being continued even now. In other words, the plaintiff Church is conducting prayers from 6 AM to 9AM on every Sunday and the other faction is conducting prayers from 10 AM to 1 PM.

5. The above two writ petitions were disposed of by the Division Bench on July 24, 2006 directing the parties to agitate the matter before the civil court. The Division Bench made it clear that it was not expressing any opinion on the merit of the rival contentions of the parties. Later by its order dated October 12, 2006 in RP.849/2006 the Division Bench made it clear that the status quo order passed by it would be subject to the orders to be passed by the civil courts. It is

admitted by the parties that the interim order passed by the Division Bench on June 9, 2006 had been in force till the impugned order was passed by the court below.

6. It is contended by learned counsel for the appellants that the court below has committed serious illegality in giving a totally erroneous interpretation to clause 6 of Ext.P10 and has exceeded its jurisdiction by allowing contesting respondents to conduct prayers and services in the Church, in addition to Sunday services. It is also contended that the court below has entered erroneous findings on the question of title which was not warranted at this interlocutory stage.

7. We have carefully gone through the impugned order and considered the rival contentions raised by learned counsel for the parties. We are of the view that the issues involved in the appeals have to be dealt with elaborately. Due to shortage of time, we are not in a position to hear the appeals.

8. As mentioned earlier, the prayers are being conducted in the Church in terms of the interim order passed by a Division Bench of this Court in its order dated June 9, 2006. There is considerable force in the contention raised by the appellants that the court below has proceeded at a tangent while dealing with contentious issues involved in the case.

Prima facie we are satisfied that the court below has not considered the relevant aspects of the case in their proper perspective. We do not express any further opinion on the findings entered by the learned Judge at this stage for the obvious reason that the appeals have to be heard elaborately. However for the time being we are satisfied that the interim arrangement made by the Division Bench in its order mentioned above has to be continued, till the appeals are heard. In other words, the operation and implementation of the impugned order will have to be stayed until further orders. Ordered accordingly.

9. It is true that the Division Bench had not made any arrangement with regard to the prayers or services to be held in connection with death, betrothal and marriage. It is made clear that the respondents will be entitled to conduct services/prayers in the Church in connection with death, betrothal and marriage also, in addition to the weekly services as permitted in the order of the Division Bench.

Therefore it is directed that St.Mary's Orthodox Syrian Cathedral, the plaintiff shall be permitted to conduct Holy Mass on every Sunday from 6AM to 9AM. The contesting respondents shall be entitled to conduct services from 10AM to 1PM on every Sunday. In addition to the above, respondents will be entitled to conduct services/prayers in

the Church in connection with death, betrothal and marriage also as and when such occasions arises.

K. K.Denesan
Judge

A.K. Basheer
Judge.

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